

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re

JOSEPH and DORIS KANE,

No. 04-11647

Debtor(s).

JOSEPH and DORIS KANE,

Plaintiff(s),

V.

A.P. No. 04-1106

FAYE TAYLOR,

Defendant(s).

Memorandum of Decision re Validity of Deed of Trust

Debtors Joseph Kane have filed two bankruptcy petitions in recent years. Their first bankruptcy was a Chapter 7, filed on June 12, 2001. Their second, still pending, is a Chapter 13 filed on July 7, 2004.

Prior to their Chapter 7 filing, the Kanes had been accused of elder abuse in state court. They had retained defendant Faye Taylor, an attorney, to defend them in those proceedings. After they filed their Chapter 7 petition, an adversary proceeding making the same elder abuse accusations was filed in

1 this court. After trial, the court ruled in favor of the Kanes. The court assumed that its ruling put an end
2 to long and difficult litigation. This assumption was wrong.

3 On October 3, 2003, the Kanes sued Taylor in state court for malpractice relating to her
4 representation of them in the state court. When the Kanes commenced their Chapter 13 case, Taylor
5 removed the state court action to this court.

6 Two bankruptcy issues are intertwined in the Kanes' action against Taylor. First, some of the
7 actions alleged in the complaint took place before the Chapter 7 was filed, so the Chapter 7 trustee may
8 have an interest in any recovery. Second, a deed of trust taken by Taylor from the Kanes in December,
9 2000 impedes the Kanes' ability to confirm a Chapter 13 plan.

10 The Chapter 7 case has been re-opened and the Chapter 7 trustee has participated in this case; no
11 Chapter 7 issues are now pending. However, if Taylor's deed of trust is valid it bars confirmation of the
12 Kanes' Chapter 13 plan. Therefore, the court must decide the validity of this deed of trust before
13 remanding the rest of the case back to state court.

14 By late 2000, the Kanes owed Taylor more than \$50,000.00 in fees which they were unable to
15 pay. At the suggestion of another lawyer consulted by the Kanes, Taylor accepted a note from the Kanes
16 for \$52,210.50 secured by a deed of trust to the Kanes' home. The deed of trust secured not only this
17 amount but also "Payment of amounts owing for legal services rendered by Faye Taylor to Doris Kane
18 on future monthly statements which are not objected to within ten days of mailing by Doris Kane." The
19 court must now decide if this deed of trust is void because Taylor failed to comply with Rule 3-300 of
20 the California Rules of Professional Conduct. Both sides have made motions for summary judgment, and
21 the issue is ripe for summary adjudication.

22 Rule 3-300(A) requires that before an attorney can validly take a security interest in a client's
23 property the terms must be fair and reasonable to the client and they must be fully disclosed and
24 transmitted in writing to the client in a manner the client should reasonably understand. Taylor violated
25 both provisions of this rule, by drafting a deed of trust that was not fair and reasonable and then failing to
26 fully explain the ramifications to the Kanes.

1 Whenever an attorney takes a note and deed of trust from a client for fees, the essential fact which
2 must be explained to the client is that in the event of a future dispute between them the deed of trust can
3 be used to summarily extinguish the client's interest in the property without any judicial scrutiny over
4 disputed fees. *Hawk v. State Bar* (1988) 45 Cal.3d 589, 600; see also *Fletcher v. Davis* (2004) 33
5 Cal.4th 61, 67-68. Taylor utterly failed to explain this to the Kanes in writing and her deed of trust must
6 be voided for this reason alone.¹

7 Moreover, the terms of the deed of trust are not fair to the Kanes. The Kanes were given only ten
8 days (from the date of *mailing*, no less) to object to any billing or the fees were automatically added to
9 their secured obligation. This grace period was far too short to be fair, even assuming that *any*
10 restriction on the right to contest a bill was fair.

11 For the following reasons, the court will make the following orders and judgments:

12 1. The Kanes' motion for summary judgment will be granted. The issue of the validity of the
13 deed of trust shall be severed from the remaining issues and a final judgment declaring the deed of trust
14 to be void will be entered pursuant to FRCP 54(b), there appearing to be no just reason for delay.

15 2. After entry of said judgment, the remainder of this adversary proceeding shall be remanded to
16 state court.

17 3. The Kanes' Chapter 13 plan will be confirmed, provided that the Chapter 13 trustee certifies
18 that no further objections to confirmation are pending.

19 Counsel for the Kanes shall submit appropriate forms of orders and judgment.

20 Dated: February 1, 2005

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22 
23 Alan Jaroslovsky
U.S. Bankruptcy Judge

24
25 ¹Taylor's argument that the terms of the deed of trust were plain misses the mark. It was the
26 *implication* of those terms which she was bound to explain to the Kanes: that without the deed of trust, a
court would have to rule in her favor in any dispute over her fees before the Kanes had to pay, but with a
deed of trust she could foreclose without judicial review.